IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1296 OF 2007
IN
COURT RECEIVER'S REPORT
IN
ARBITRATION PETITION NO.470 OF 2002

Lalitkumar Vanmalidas Sanghavi ...Petitioner
Versus
Dharamdas Vanmalidas Sanghavi & Ors. ...Respondents
And
Dharamdas V. Sanghavi ...Applicant
Versus
The Court Receiver ...Respondent

Shri Lalitkumar V. Sanghavi, Petitioner in person present.
Shri K.P.Anilkumar for the Applicant.
Shri D.V.Devkar, Ist Assistant to Court Receiver.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 31, 2007.

P.C.:

1. The Chamber Summons has been taken out by the first Respondent in Arbitration Petition No.470 of 2002. I have heard the learned counsel appearing for the first Respondent (Applicant) in support of Chamber Summons. The Petitioner in the Arbitration Petition appears in person for opposing the Chamber Summons.

2. The learned counsel for the first Respondent submitted that the royalty fixed by the 1st Assistant to the Court Receiver is exorbitant. He submitted that it is impossible for the first Respondent to pay such royalty in view of reasons set out in paragraph Nos.18

and 19 of the affidavit in support. He submitted that before the Division Bench in Appeal Lodging No.295 of 2007, parties agreed to reduce the adhoc royalty from Rs.15,000/- to Rs.8,000/-. He, therefore, submitted that the royalty deserves to be reduced to Rs.8,000/- per month. He submitted that the submission of the Advocate for the first Respondent recorded by the 1st Assistant to the Court Receiver in his order dated 25th July, 2007 (on page No.24 of the affidavit in support) is not correct and infact no such submission was made.

3. The Petitioner appearing in person opposed the Chamber Summons. He submitted that as the first Respondent did not substantiate his case that the value of the flat was not more than Rs.35,00,000/-, the 1st Assistant to the Court Receiver was justified in taking the aid of the rates of the flats published in Times Property for fixing the royalty. He submitted that no interference is called for in the order passed by the 1st Assistant to the Court Receiver. He stated that the first Respondent is not paying the royalty regularly.

4. I have considered the submissions. The first Respondent was ordered to be appointed as agent of the Court Receiver by order dated 22nd January, 2007 passed by this Court in Misc.Petition No.11 of 2007 taken out

in Arbitration Petition No.470 of 2002. The agency was subject to payment of monthly royalty and compliance with other usual conditions. The Court Receiver was directed to fix the royalty. By way of adhoc royalty, the first Respondent was directed to pay a sum of Rs.15,000/- per month from 01st November, 2002. In so far as order appointing the receiver is concerned, the same has attained finality. The order directing the first Respondent to pay monthly royalty and furnish security has also attained finality. By order dated 27th April, 2007 the Division Bench reduced the adhoc royalty from Rs.15,000/- to Rs.8,000/-. Infact, the Division Bench has recorded an undertaking of the first Respondent to pay royalty amount as may be decided by the Court Receiver.

5. The first Respondent cannot rely upon the quantification of the royalty by Division Bench as it was only an adhoc royalty pending the final determination of the royalty by the Court Receiver. The Court Receiver has recorded that the first Respondent submitted that the market value of the flat is not more than Rs.35,00,000/-. There is no assertion in the affidavit in support that such submission was not made before the 1st Assistant to the Court Receiver. If it was the case of the first Respondent that the market

value of the flat is not more than Rs.35,00,000/-, he should have produced the material in that behalf before the Court Receiver. The 1st Assistant to Court Receiver has recorded that he was handicapped as none of the parties produced any material including the sale instances of similarly situated flats. Therefore, he has taken the rates as appearing in the Times Property and has fixed the royalty at the rate of Rs.26,000/- per month on the basis that the market value of the flat is Rs.57,12,000/- at the rate of Rs.7,000/- per sq feet.

6. The learned counsel for the first Respondent now states that the first Respondent is willing to produce a valuation report and other material before the Court Receiver. I am inclined to give one opportunity to the first Respondent to produce the material before the Court Receiver to substantiate the stand taken by him that the market value of the flat at the relevant time was not more than Rs.35,00,000/-. If the first Respondent is permitted to produce the material, the Petitioner will have to be also permitted to produce necessary material before the Court Receiver.

7. Hence, I pass the following order

(i) The decision of the 1st Assistant to the Court

Receiver to fix the royalty at the rate of Rs.26,000/- per month is quashed and set aside.

(ii) It will be open for both the parties i.e the Petitioner and the first Respondent to produce relevant material before the Court Receiver regarding the market value of the flat in dispute. The material shall be produced by both the parties within a period of four weeks from today. The Receiver after giving an opportunity of being heard to the parties will fix the royalty within a period of four weeks thereafter.

(iii) Till the royalty amount is fixed by the Court Receiver, the first Respondent will continue to pay adhoc royalty as per the order dated 27th April, 2007 passed by the Division Bench of this Court.

(iv) The Chamber Summons is disposed of in above terms.

(v) The parties and the Court Receiver to act upon an authenticated copy of this order.

JUDGE